

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES MCDONALD,

Plaintiff,

v.

ONEWEST BANK, FSB, *et al.*,

Defendants.

No. C10-1952RSL

ORDER DENYING PLAINTIFF'S
MOTION FOR DISBURSEMENT
OF REGISTRY FUNDS

This matter comes before the Court on plaintiff's "Motion for Disbursement of Registry Funds." Dkt. # 144. On January 25, 2011, the Court enjoined defendants from foreclosing on plaintiff's property until his objections to the foreclosure procedure could be resolved. The Court found that plaintiff had raised serious questions going to the merits of his Deed of Trust Act ("DTA") claim, that the balance of hardships tipped decidedly in favor of issuing an injunction, and that the public did not have a strong interest in favor of or against either party given the disputed factual issues. The preliminary injunction was contingent on plaintiff making monthly payments into the registry of the Court in order to protect defendants' financial interests and ensure that plaintiff was not using the judicial process to avoid an existing legal obligation.

Plaintiff deposited \$9,390.24 into the registry between January and May 2011. No additional payments were made. The Court provided plaintiff an opportunity to make the

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1 payments that were due and owing as of February 2012, but he failed to do so. Because the
2 registry account was delinquent, the preliminary injunction was dissolved on or about April 1,
3 2012. Plaintiff now seeks to recover the \$9,390.24 he deposited at the outset of this litigation,
4 arguing that the lifting of the preliminary injunction obviates the need for security.

5 Plaintiff misapprehends the purpose of the security requirement. Plaintiff
6 successfully stalled the non-judicial foreclosure of his house for over a year and, as far as the
7 record reveals, continues to enjoy the benefits of home ownership. Regardless of whether
8 plaintiff is able to prove his allegations regarding DTA violations, plaintiff borrowed money to
9 pay for his house and may ultimately be required to pay down the loan or vacate the premises.¹
10 Unless and until plaintiff establishes that none of the named defendants has a colorable claim to
11 his monthly loan payments, the \$9,390.24 currently in the registry of the Court will be retained
12 for disbursement to the lender. Plaintiff is not entitled to a free home or the eradication of the
13 underlying debt: the few monthly payments in the registry will, if appropriate, be used to offset
14 the losses the lender has incurred during the pendency of this litigation

15
16 For all of the foregoing reasons, plaintiff's motion to disbursement of funds (Dkt.
17 # 144) is DENIED.

18 Dated this 8th day of June, 2012.

19 

20 Robert S. Lasnik

21 United States District Judge
22

23
24 ¹ Even if defendants are unable to utilize the non-judicial foreclosure procedures set forth in the
25 DTA, they will likely pursue a traditional judicial foreclosure. If defendants can show by a
26 preponderance of the evidence that one or more of them is entitled to the loan payments and that
payments have not been made, foreclosure may be appropriate.